

(1879) 03 AHC CK 0001

Allahabad High Court

Case No: None

Ram Narayan

APPELLANT

Vs

Nanak Chand and
Another

RESPONDENT

Date of Decision: March 11, 1879

Citation: (1880) ILR (All) 192

Hon'ble Judges: Robert Stuart, C.J; Turner, J; Spankie, J; Pearson, J; Oldfield, J

Bench: Full Bench

Judgement

Robert Stuart, C.J.

The procedure before the Munsif in this case appears to me to have been most irregular. u/s 323 of Act VIII of 1859 the Munsif could only remit the award for reconsideration if an objection to its legality is apparent on the face of it. But instead of considering the matter in this simple light the Munsif, on the 9th August 1875, made the following extraordinary and anomalous order: "Apparently it appears that the principles of Hindu law relied upon were decided against the petitioner in the arbitration award: therefore, it is ordered that the award may be sent to the arbitrator to consider the bywasthas attached to this petition, and submit his opinion in writing to the Court." Or as if he said in other words, "It appears that the principles of Hindu law were applied by the arbitrator, but something more is wanted, and "therefore" the award must go back to him for reconsideration." If such is not the meaning of the order, he therefore should have led to the very different conclusion of the award being accepted and applied by the Munsif, especially as he had admitted in his judgment not only that "the inquiry and award made by the arbitrator are admirable and excellent," but that the award was "in conformity with the evidence on the record."

2. It will be seen that, instead of showing that the award is illegal "on the face of it," the Munsif expresses his order in terms in that ought to have led him to the opposite conclusion, but nevertheless he at the same time, and Sections 323 and

324* of Act VIII of 1859 notwithstanding, entertains the complaint that the findings in the award were opposed to the authorities in Hindu law relied upon by the plaintiff, and for this reason, and for this reason alone, he orders that the award may be sent back to the arbitrator for reconsideration, but admitting notwithstanding, so far as the language of his order is concerned, that the principles of the Hindu law had evidently been considered in making the award, in other words, that the arbitrator had done his duty. Such procedure not only cannot be allowed to stand for one moment, but in my opinion is deserving of the severest censure. Nor does the arbitrator, finding himself placed in the position assigned him by this foolish order, appear to have himself uncomplainingly to it, and only noticed it by a petition, dated the 28th of August, in which he referred to the bad state of his health and the difficulties of the case, among others, certain Sanskrit texts which he had been unable to understand or to get satisfactorily translated for him. In this petition, however, the arbitrator goes chiefly upon his bad health and his consequent inability to proceed with case. He therefore declines to act any further and he begs the Court either to decide the case itself or to appoint another arbitrator in his stead. The Munsif adopted the former course, proceeded with the case, and decreed the plaintiff's claim, which decree was affirmed by the lower Appellate Court.

3. All this procedure was utterly mistaken. I have carefully perused the award and in my judgment it shows no illegality on the face of it. It recites the reference to the arbitrator for his decision, and then it states as follows: "I have investigated the case to my satisfaction, and have taken down the depositions of witnesses and the statements of the parties. I have also taken and perused the passages in the Hindu law referred to by the parties and their pleaders." Now in the face of such a statement the Munsif had no right to assume that the arbitrator had not correctly applied the Hindu law. Any error of the kind must appear on the face of the award itself, which, however, on the contrary states "he had perused the passages of the Hindu law referred to by the parties and their pleaders." This I consider was a sufficient compliance with his duty as an arbitrator under the Code of Procedure, Act VIII of 1859, and if the Munsif differed from him, and believed that he had not correctly applied the principles of the Hindu law, the award was not thereby rendered invalid, and ought not to have been remitted for reconsideration, for on the face of it, it was right, and it is distinctly provided by Section 324 of Act VIII of 1859 that "no award shall be liable to be set aside except on the grounds of corruption or misconduct of the arbitrator or umpire." In fact, in accepting him as their arbitrator, the parties accepted his judgment and opinion, and his understanding of the Hindu law applicable to the case, and were bound by his judgment and opinion and his law, no matter how mistaken he may have been in these respects. And the Munsif who, as I have shown, admits in his judgment that the award was excellent and admirable and unimpeachable on the evidence, was bound by it too, and he ought to have given judgment according to it, his judgment being final and not open to appeal to the Judge or Subordinate Judge.

4. Holding this opinion, and I must add holding it very clearly, I would, concurring with Mr. Justice Spankie, allow this appeal, and reverse the judgment of the Division Bench, and I would set aside the whole procedure before the Munsif subsequent to the filing of the arbitrator's award, and order a decree by this Court according to the award, and dismiss the suit, with costs, in all the Courts.

Pearson, J.

5. The question to be determined by the Full Bench is, I presume, whether the judgment which is the subject of the present appeal rightly or wrongly disposed of the special appeal heard by the Division Bench. If reference be made to the grounds of the special appeal, it will appear that two substantial questions are raised by it, first, was the Munsif justified in remitting the award for consideration; second was he justified in setting it aside when the arbitrator refused to reconsider it. The first of these questions will include the applicability of the Hindu law to the matter in dispute. The plaintiff claimed to recover from his uncles a sum which he had received from his father-in-law as a marriage present, and which, he alleged, they had appropriated to their own use. Their defence was that they had not taken it, but that it had been expended on this marriage by his father. The matter being referred to arbitration, the arbitrator disallowed the claim, because the sum claimed had been entered in the accounts of the family firm, as a set-off against the plaintiff's marriage expenses. The award is obviously unsatisfactory, but on the plaintiff objecting that it was opposed to Hindu law, and filing bywasthas in support of the objection, it appeared to the Munsif that it was bad in law. This being so, I conceive that he was not only justified in remitting it for reconsideration, but was bound to remit it. Both the lower Courts have now decided that the plaintiff's claim is valid under the Hindu law. It was not pleaded in the special appeal, and it is not pleaded in the present appeal, that the lower Court's exposition of Hindu law is erroneous. What was pleaded in the special appeal was that the Courts were not bound to apply the Hindu law to the case. I ruled that the Hindu law, if not by statute law expressly applicable, was the law which equity, justice, and good conscience required to be applied to the case. It is now pleaded that my ruling is incorrect. I entertain no doubt of its correctness myself, and I shall be surprised if the plea should find its acceptance.

6. On the other question whether, on the refusal of the arbitrator to reconsider his award, the Munsif was justified in setting it aside and proceeding to try the case himself, I do not perceive that my honourable colleague on the Division Bench in the judgment delivered by him on the 28th June 1877, expressed an opinion different from that expressed by me. It is obvious to remark that, if the Munsif was precluded from setting aside the award in this case by the provisions of Section 324 of Act VIII of 1859, he would be precluded from so doing in a case in which an arbitrator refused to reconsider an award which left undetermined some of the matters referred to arbitration, and was so indefinite as to be incapable of execution; and

such a contention could not probably be maintained.

7. In my judgment the pleas in appeal are without weight, and the appeal should be dismissed with costs.

Turner, J.

8. (After stating the facts leading up to the arbitration and award, continued:) The plaintiff's pleader obtained the opinions of some pandits who averred as is not disputed that gifts at marriage are regarded as separate acquisitions, and petitioned the Munsif to remit the award, with these opinions, to the arbitrator. The Munsif without declaring that an objection to the legality was apparent on the face of the award remitted the award with the opinions, and requested the arbitrator to consider them, and to return his opinion in writing in a week.

9. In special appeal the honourable Judges of the Division Bench differed as to whether or not an objection to the legality of the award was apparent on the face of it. The Senior Judge held such an objection was apparent, and that the Munsif was therefore justified in remitting the award for the consideration of the point of law. It is to be observed that the plaintiff did not come into Court alleging that he and the defendants were members of a family. Nor did he allege that the defendants claimed to retain the money as falling into and forming part of the common stock. They were charged with having appropriated the money to their own use, and they denied that they had received it, but admitted it had been credited in the books of the firm in which they, the plaintiff, and his father, were jointly interested against a larger sum expended on his marriage. It is to be noticed that, if there had been a question as to whether the moneys received on the plaintiff's marriage formed part of a common stock, or even of the partnership funds, the plaintiff's father should have been made a party to the suit. On the proceedings I do not see that there was an objection to the legality of the award apparent on the face of it. If one partner sues another for moneys recoverable on his account, it would surely be an answer that the moneys so received had been credited against a debt due by him to the firm.

10. I therefore am of opinion that the Munsif was not justified in remitting the award to the arbitrator. At the same time having perused the evidence it is apparent to me that the questions really in issue were not properly raised by the pleadings; and, moreover, that they are not disposed of by the judgment of the Court below. The parties are members of a family who, while retaining undivided the firm which has descended to them from their common ancestor, have also separate dealings, and I have no doubt that the dispute arises out of the question as to whether or not expenses relating to the plaintiff's marriage ought to be met by the separate property of his father or out of the joint firm. The questions which called for determination in this suit appear to me to be the following: Did the sums received on the occasion of the plaintiff's marriage come to the hands of the defendants: If

they did have they been appropriated by the defendants to their own use: for if they have been so appropriated, the defendants are liable, and it is unnecessary to go further: but if the moneys have not been appropriated by the defendants to their own use, but have been carried into the firm, then the question arises whether the defendants were at liberty to set them off against expenses incurred by the firm on the plaintiff's marriage, and before determining this issue, the plaintiff's father should have been made a party to the suit. All proper parties being before the Court, it should then have been inquired whether the joint fund or the separate estate of each of the partners should have been charged with the marriage expenses of the members of the family. Had the parties been members of a Hindu family living altogether in commensality, I admit that the plaintiff would have been entitled to claim his marriage presents as a separate acquisition, and that the Courts would be justified in applying Hindu law, and I hold further that, in determining whether the joint or separate estate should bear the expenses of the plaintiff's marriage, the Courts are justified in applying Hindu law, controlled as it may be by the agreement binding on the members as to the purposes to which the property remaining undivided should be applied. In my judgment the appeal should prevail and be decreed, the claim being dismissed on the ground that the award was a good award, and that a decree should have passed in accordance with it, but if it be held that the award was open to the objection urged, and that the plaintiff was justified in trying the suit on the merits, it is in my judgment necessary for the purposes of justice that such of the issues suggested by me as are undisposed of by the judgment of the Subordinate Judge should be tried, and I would remit them for that purpose.

Spankie, J.

11. I adhere to my opinion. With regard to the nature of the claim, the statements of the parties, the reference to arbitration, and the award itself, I see no illegality apparent on the face of the award, and therefore it was not one with which the Munsif could interfere u/s 323 of Act VIII of 1859. It may be erroneous in law, but, if so, that error is not apparent on the face of the award, and therefore it cannot be set aside merely because it is erroneous in law.

Oldfield, J.

12. I am of the same opinion in this case as Mr. Justice Spankie, The award was improperly remitted to the reconsideration of the arbitrator, as there was no ground u/s 323 which justified the Munsif to remit it. There was no objection to the legality of the award apparent on the face of the award; the decision was made upon facts in connection with the partnership relations of the parties, and the Munsif in remitting the award does not point out the particular illegality apparent upon the face of the award, nor does he appear to have come to any conclusion that there was an apparent legal defect; he merely remitted it that the arbitrator should consider some objections which the plaintiff alleged against a supposed view of the

Hindu law taken by the arbitrator.

13. There were no objections taken u/s 324, and under the circumstances the Court should have given judgment according to the award.

-----Foot Note-----

*[Award not to be set aside except on ground of corruption. Application to set aside the award.]

Section 324: No award shall be liable to set aside except on the ground of corruption or misconduct of the arbitrators or umpires. Any application to set aside an award shall be made within ten days after the same has been submitted to the Court.]